

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

PUTNAM CENTER, INC.

Employer ¹

and

PUTNAM HOSPITAL REGISTERED NURSES, FEDERATION
OF NURSES AND HEALTH PROFESSIONALS, NEW YORK
STATE UNITED TEACHERS, a/w AMERICAN FEDERATION
OF TEACHERS, AFL-CIO

Petitioner ²

Case No. 34-RC-1721

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.³

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ Contrary to the Employer's contention, the record reveals that the Petitioner is an organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work. In this regard, it is well established that the lack of structural formalities or the failure to collect dues is insufficient to preclude a finding of labor organization status. *Butler Manufacturing Co.*, 167 NLRB 308 (1967). Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁴

5. The Employer is a New York corporation engaged in the operation of Putnam Hospital Center, an acute care hospital located in Carmel, New York, and other health care facilities, including PHC Home Care located in Brewster, New York, PHC Education located in Carmel, New York, Community Caregivers, Inc., also located in Carmel, New York, and Craig House Center, Inc., located in Beacon, New York. The Petitioner seeks to represent a unit of all full-time, regular part-time and per diem registered nurses (RNs) employed by the Employer at Putnam Hospital Center, PHC Home Care, and PHC Education. Although otherwise in accord as to the scope and composition of the unit, the Employer, contrary to the Petitioner, would exclude all RNs who occupy the position of charge nurse and team leader in the operating room at the Putnam Hospital Center on the grounds that they are supervisors within the meaning of Section 2(11) of the Act. The Petitioner, contrary to the Employer, would exclude the patient representative and the nurse practitioner at Putnam Hospital Center, and all RNs employed at Craig House and Community Caregivers, because they do not share a sufficient community of interest with RNs in the petitioned-for unit. Although there is no history of collective bargaining regarding any of the petitioned-for employees, the Employer's non-professional employees are represented by another labor organization with a collective-bargaining agreement currently in effect which expires in May 2000.

Charge Nurses and Team Leaders

As noted above, all of the disputed charge nurses and team leaders are employed solely at the Putnam Hospital Center (herein called the Hospital). Primarily responsible for the overall supervision of nursing care at the Hospital is Senior Vice President for Patient Care Services Susan Mateo. Reporting directly to Mateo is the assistant vice-president for patient care services, the director of home care, the administrative director of mental health services, the director of surgical services and the director of the emergency department. Reporting directly to the assistant vice-president for patient care services is the director of ICU/Reed 2, the director of MS-2 /Reed 3, the director of respiratory therapy, the manager of diet therapy, and the chief tech of cardio-neuro. The director of patient care reports directly

⁴ In light of my finding below that the Employer's charge nurses are not supervisors within the meaning of Section 2(11) of the Act, the Employer's motion to dismiss the petition on the grounds that charge nurses participated in the formation of the Petitioner and the filing of the petition is hereby denied.

to the director of home care; the manager of mental health reports directly to the administrative director of mental health services; and the manager of the operating room reports directly to the director of surgical services.

The Hospital utilizes a three shift per day schedule. One charge nurse is always assigned for each shift in the following units of the Hospital: Emergency Room, Mental Health Services, OB/GYN, Reed 2, Reed 3, ICU and MS-2. Although the charge nurses on the day shift in mental health services, OB/GYN, Reed 2, Reed 3, ICU and MS-2 are regularly assigned to that position on a full-time basis, there is no regularly assigned charge nurse on the day shift in the emergency room. Instead, that charge nurse, as well as all charge nurses on the evening and night shifts in the above-noted units, are selected from among the RNs who work in those units and have demonstrated the ability and desire to function as a charge nurse. As a result, there are 6 regularly assigned full-time charge nurses, and approximately 12-18 RNs who regularly serve as charge nurses on all shifts in the emergency room or on the evening and night shifts in the other units noted above. Although not entirely clear, it appears that the charge nurse on each shift reports directly to a “supervisor” or “manager.”

All RNs who serve as charge nurses perform the same functions and have the same responsibilities and authority. In this regard, charge nurses are responsible for overseeing the patient care provided to all patients in their assigned unit. This requires them to generally direct the patient care work performed by all assigned employees, which may include RNs, LPNs, and patient care aides. Although the record reflects that there is generally one RN, two LPNs, and one patient care aide on the night shift in MS-2, the record does not reflect how many other employees besides the charge nurse are typically assigned to the other units and shifts. However, there could be as few as one employee assigned to work with a charge nurse on a particular shift and unit. Charge nurses may either be assigned a regular patient load or perform patient care duties on an as-needed basis.

Charge nurses have no input into the scheduling of employees to work on particular units or shifts. Thus, at the outset of each shift, the charge nurse will review a report received from the prior shift that describes what has occurred on the unit and the particular needs of each patient. Based upon that report, the charge nurse assigns each scheduled employee to particular patients based upon the patient’s required level of care and the employee’s workload and ability to provide such care. In the event that an employee calls in sick, the charge nurse will meet with the supervisor of the unit and a decision will be made as to how

to cover the work in the unit on that shift. In the event that additional employees are needed to cover the shift, the supervisor is responsible for securing those employees. In the course of each shift, patient assignments may be changed by the charge nurse as a result of changes in patient condition and/or changes in available staff.

The charge nurse is expected to review the care that has been delivered to patients by the employees assigned to his or her unit by insuring that assignments have been completed, that any new tasks that have been added to the assignment have been completed, and that such care has been provided in a quality manner. If the charge nurse determines that a task was not completed by an employee in a proper manner, he or she may direct the employee to repeat the task. The charge nurse also oversees employee attendance, use of break time, appropriate dress and conduct, and general interactions between and among employees. In the event that a charge nurse observes conduct which may warrant discipline, he or she reports it to higher management, who are then responsible for the investigation and determination as to whether discipline will issue. Similarly, if a charge nurse determines that an employee needs further training, he or she will report it to higher management, who are then responsible for determining whether and what type of training will be provided. Although charge nurses have “input” into the evaluation of employees, there is no evidence as to the nature or impact of such input, or whether such input has affected the job status of any employee. Moreover, the record reflects that charge nurses do not evaluate RNs. Finally, there is no evidence that the charge nurses play any role in the processing of grievances involving the patient care aides who are covered by a collective-bargaining agreement.

All charge nurses receive specialized in-service training before they may serve as a charge nurse. This training covers such issues as conflict resolution, communication skills, time management, prioritizing assignments, preparing and processing incident reports, risk management, and understanding the Hospital's mission. Charge nurses are paid \$.65 per hour more than their regular RN rate of pay.

The two team leaders in the operating room perform the same functions and have the same responsibilities as the charge nurses, except that their work is restricted to directing the work of the nurses, technicians and housekeeping staff in the operating room. Although not entirely clear, it appears that the team leaders work in conjunction with the manager of the operating room to assign employees to particular rooms and patients based upon the particular skills and abilities of the employee and the nature of the surgery. They are also responsible for insuring that all pre-operative paperwork and procedures have been followed

and that the housekeeping staff has properly cleaned the operating room before surgery. They only perform surgical duties in emergencies. There are approximately 10 employees on the orthopedic surgery team, and approximately 13-15 employees on the general surgery team. The team leaders receive the same additional \$.65 per hour as charge nurses, as well as the same specialized in-service training.

Based upon the foregoing and the record as a whole, I find that the charge nurses and team leaders in the operating room are not supervisors within the meaning of Section 2(11) of the Act. See e.g., *Beverly Enterprises-Pennsylvania, Inc. v. N.L.R.B.*, 129 F.3d 1269, 156 LRRM 2869 (D.C. Cir., 1997), enforcing 322 NLRB No. 54 (1996); *Rest Haven Living Center, Inc.*, 322 NLRB 210 (1996); *Nymed, Inc., d/b/a Ten Brock Commons*, 320 NLRB 806 (1996). More specifically, although there is an element of discretion in the performance of the charge nurses' and team leaders' duties, it falls far short of the independent judgment indicative of the supervisory authority contemplated by the Act. In this regard, while the charge nurses and team leaders may assign and direct the work of other employees, such authority is routine in nature and does not require the exercise of independent judgment. See *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997); *Sherwood Corporation d/b/a Parkview Manor*, 321 NLRB 477 (1996); *Washington Nursing Home, Inc.*, 321 NLRB 366, n. 4 (1996). Moreover, there is no evidence that their input into the evaluation of employees includes any recommendations for promotions, raises or awards, nor is there any evidence that their participation in the evaluation process has affected the job status of any employee. See *Nymed, Inc. d/b/a Ten Broeck Commons*, 320 NLRB at 813, n. 12; *Passavant Health Center*, 284 NLRB 887, 891 (1987); *Lakeview Health Center*, 308 NLRB 75, 78 (1992). The preparation of incident reports which may initiate the disciplinary process, which is handled by higher management, establishes that their involvement is reportorial in nature. See *Illinois Veterans Home*, supra; *Evangeline of Natchitoches, Inc.*, 323 NLRB 223 (1997); *Rest Haven Living Center, Inc.*, 322 NLRB at 212. Finally, despite the assertion that the charge nurses and team leaders direct the work of employees covered by a collective-bargaining agreement, I note the absence of any evidence that they have any role in the processing of grievances involving such employees. Accordingly, I shall include the charge nurses and the team leaders in the operating room in the petitioned-for unit.

Nurse Practitioner

As noted above, the Petitioner would exclude the nurse practitioner as lacking a community of interest with the RNs in the petitioned-for unit. The record reflects that the

nurse practitioner works on the day shift in Reed 4, which is the Hospital's mental health unit. She reports directly to the manager of the mental health department. In addition to being an RN, the nurse practitioner also requires a masters degree in nursing and attendance at a training program which results in a license issued by the State of New York as a nurse practitioner. As a result of that license, the nurse practitioner can prescribe certain psychiatric medications which the other RNs in the mental health unit may not prescribe. In all other respects, their duties and responsibilities are the same. The nurse practitioner is paid approximately 10% more than the highest paid RN. In all other respects, their benefits and other terms and conditions of employment are the same.

Based upon the foregoing and the record as a whole, I find that the nurse practitioner shares a sufficient community of interest with RNs in the petitioned-for unit to be included therein. See *Rockridge Medical Care Center*, 221 NLRB 560 (1975). Accordingly, I shall include the nurse practitioner in the petitioned-for unit.

Patient Representative

As noted above, the Petitioner would exclude the patient representative as lacking a community of interest with the RNs in the petitioned-for unit. The record reflects that the patient representative is an RN who reports directly to a doctor in the medical services department. Her function is to investigate and resolve complaints filed by patients or their families involving the care provided by the Hospital. She also investigates incident reports filed by employees involving patient care issues. Although it appears that she deals primarily with the managers from the various Hospital departments in the course of her investigations, she may also come into contact with RNs. However, the record does not reflect the frequency or extent of such contacts, or her regular work location. The patient representative is paid within the same pay range as other RNs.

Based upon the foregoing and the record as a whole, I am unable to determine whether the patient representative should be included in the petitioned-for unit. Accordingly, I shall permit the patient representative to vote subject to challenge in the election directed herein.

Craig House

As noted above, the Petitioner would exclude the RNs employed at Craig House as lacking a sufficient community of interest with RNs in the petitioned-for unit. The record reflects that Craig House is a psychiatric facility with 61 patient beds located in Beacon, New York, which is about 30 miles from the Hospital. The Employer purchased Craig House in

about 1990. Although it normally has its own director, the Hospital's director of mental health is temporarily serving as the director of Craig House. The director of Craig House reports directly to Susan Mateo, who visits Craig House 3 or 4 times per month and maintains daily telephonic contact.

Craig House consists of an adult unit, an adolescent unit, and a chemical dependency unit, in contrast to the mental health unit at the Hospital which is not divided into units and does not treat adolescents. In all other respects, however, it appears that the psychiatric care provided at Craig House is the same as that provided in the Hospital's mental health unit. The employees at Craig House include, inter alia, approximately 42 full-time, part-time and per diem RNs. They report directly to nursing supervisors located at Craig House. The record establishes that there is no interchange of either patients or employees between Craig House and the Hospital. Moreover, job postings for the Hospital are not posted in Craig House, nor are job postings for Craig House posted at the Hospital. Craig House employs its own in-service instructor who provides all in-service training to Craig House employees. Moreover, the RNs at Craig House are paid pursuant to a separate pay range from the RNs at the Hospital, and are covered by separate retirement, health and life insurance plans.

Based upon the foregoing and the record as a whole, and noting particularly the geographic separation, separate immediate supervision, lack of interchange, and different terms and conditions of employment, I find that the RNs at Craig House do not share a sufficient community of interest to be included in the petitioned-for unit. See *Executive Resources Associates, Inc.*, 301 NLRB 400 (1991); *Associated Milk Producers, Inc.*, 251 NLRB 1407 (1980); see generally, *Mercywood Health Building*, 287 NLRB 1114 (1988); *Staten Island University Hospital*, 308 NLRB 58 (1992).⁵ Accordingly, I shall exclude the RNs at Craig House from the petitioned-for unit.

Community Caregivers

As noted above, the Petitioner would exclude the RNs employed at Community Caregivers as not sharing a sufficient community of interest with RNs in the petitioned-for unit. The record reflects, however, that there are as yet no RNs employed by Community

⁵ I find no merit to the Employer's contention that the RNs at Craig House must be included in the petitioned-for unit based upon the Board's presumption in favor of single-facility bargaining units. In this regard, it is well established that the presumptive appropriateness of a single-facility unit is inapplicable where the petitioner, as in the instant case, seeks to represent a multi-facility unit. *Capital Coors Co.*, 309 NLRB 322 (1992), citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-887 (9th Cir., 1986).

Caregivers. In this regard, on January 1, 1999, following a two-year process, Community Caregivers obtained a license from the State of New York which permits it to supply RNs to individuals requiring nursing care in their homes, or to other health care institutions requiring licensed nursing personnel. In order to secure the license, Community Caregivers was required to establish that it had a governing board, by-laws, policies and procedures, and a nurse in charge. A lease for office space has been secured in an office building approximately 10 miles from the Hospital known as the Clock Tower.⁶ Office equipment and furniture have been purchased for those offices. An RN who until recently was employed in the Hospital's home care department has been hired as the nurse in charge of Community Caregivers, with the title "supervisor of home care." She reports directly to the Hospital's director of home care.

The hiring process for filling the approximately 20 positions at Community Caregivers has recently begun. In this regard, the positions will initially be filled through job postings at the Hospital, and thereafter by public advertisements. It is anticipated that the 20 positions will be filled within the next 30 days. Although all applicants will initially be screened by the Hospital's human resources department, the final hiring decisions will be made by the supervisor of home care at Community Caregivers. Once RNs are hired, they will be working in client homes or client facilities, with very little work time spent at the Community Caregivers offices.

Based upon the foregoing and the record as a whole, I find that the RNs who will be employed by Community Caregivers do not share a sufficient community of interest to be included in the petitioned-for unit. In this regard, I note particularly that they will be subject to separate immediate supervision and working conditions, and that there is no evidence that such RNs will have any work related contacts with any other employees in the petitioned-for unit. See *Executive Resources Associates, Inc.*, supra.⁷ Accordingly, I shall exclude the RNs at Community Caregivers from the petitioned-for unit.

⁶ PHC Home Care is also located in the Clock Tower. The parties stipulated that the 21 home care nurses, 3 home care long term nurses and the home care billing nurse employed at PHC Home Care should be included in the petitioned-for unit.

⁷ Contrary to the Employer's contention, the parties' stipulation to include in the unit RNs who perform home care work for PHC Home Care does not support the inclusion of the RNs to be employed by Community Caregivers. In this regard, I note the complete absence of any record evidence regarding the work performed by the RNs at PHC Home Care. See *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491, 509 (1993).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and per diem registered nurses (RNs) employed by the Employer, including community health RNs and the in-service instructor employed at PHC Education, home care nurses, home care long term nurses, and home care billing nurse employed at PHC Home Care, and charge nurses, team leaders in the operating room, medical surgical nurses, psychiatric nurses, pediatric nurses, emergency care nurses, operating room nurses, pre-admission testing (PAT) nurses, endoscopy nurses, pain management nurses, renal nurses, radiology nurses, case manager nurses, infection control nurses, special projects nurses, float nurses, maternity nurses, clinical specialist nurse, nurse practitioner, critical care nurses, PACU nurses, and ambulatory surgery unit (ASU) nurses employed at Putnam Hospital Center; but excluding all other employees, all RNs employed at Craig House and Community Caregivers, team leaders employed at PHC Home Care, outcome manager, nursing supervisors, part-time nurse supervisors, nurse managers, clinical specialist, director of mental health, director of emergency services, director of medical surgical, director of critical care, off shift coordinators, employee health coordinator, day supervisors, assistant vice president for patient care services, senior vice president for patient care services, office clerical employees, and guards, other professional employees, and other supervisors as defined in the Act.

In addition, for the reasons set forth above in footnote 4, I find no merit to the Employer's contention that the Board's single facility unit presumption mandates the inclusion of the RNs at Community Caregivers.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Putnam Hospital Registered Nurses, Federation of Nurses and Health Professionals, New York State United Teachers, a/w American Federation of Teachers, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them.

Excelsior Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before June 1, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 8, 1999.

Dated at Hartford, Connecticut this 25th day of May, 1999.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Acting Regional Director
Region 34
National Labor Relations Board

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